

Review of Gerald Gaus's The Order of Public Reason

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The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World, Gerald Gaus, Cambridge University Press, 2011, 621 pages.

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Gerald Gaus's *The Order of Public Reason* is one of the most ambitious systems constructed in moral and political philosophy in recent years. It covers everything from practical rationality and moral emotions in moral philosophy to human rights, political obligations and the limits of the state in political philosophy. In creating a unified theory that deals with all these issues, it uses not only traditional philosophical tools but also methods and results of decision and game theory, evolutionary theory, economics, sociology and empirical moral psychology. Because of this, Gaus's book is a genuine intellectual achievement. It is also written in an accessible and engaging way. *The Order of Public Reason* will be discussed in a large number of conferences, special editions of journals and graduate seminars.

Summarising Gaus's long book comprehensively is impossible, but I will still attempt to do this in the first half of this review. I will then explain why Gaus's overall argument from the nature of moral authority and judgments to a small liberal state fails. Even though I believe that the overall argument fails, many sections of the book deserve to be studied closely.

Gaus's book is divided into eight long chapters, which are subdivided into three or four sections. The first chapter introduces the problem which the rest of the book is supposed to solve. Social morality, understood as a set of rules that require and prohibit actions, is ubiquitous. This system of rules potentially makes mutually beneficial co-operative social life possible and it is the basis of justifiable authority over us. We let what is right and wrong guide our actions and we refer to it to make moral claims on each other. We also understand ourselves to be free and equal persons. The problem then is: how can these two ideas be compatible? How can we remain free and equal when social morality has authority over us and others can use that authority to demand things from us? The first chapter also suggests what the solution to this problem will look like. The requirements of social morality will not undermine our individual freedom as long as we can endorse the social morality on the basis of our best understanding of our reasons.

The three chapters of Part 1 lay out the philosophical foundations of Gaus's solution. Chapter 3 argues against instrumentalism according to which complying with the demands of morality is the most efficient means to our own ends. According to instrumentalism, subjecting yourself to moral norms is rational because you can believe that this is the best prospect for achieving your goals. Unfortunately the lesson of the Prisoner's Dilemma is that merely instrumentally rational agents do not obtain the Pareto optimal outcome which a group of moral agents could achieve.

Gaus considers two responses to this problem: the adoption of non-standard evidential or constraint maximization decision theories and repeated interactions in which agents adopt conditional co-operation rules that have advantageous equilibrium points. According to Gaus, the former solutions are problematic because they require giving up essential elements of our

practical reasoning. For example, it would no longer be the case that our practical deliberation should be forward-looking and take into account all new relevant information. In contrast, the problem with the second approach is that it fails to explain how a group of instrumentally rational agents could begin to follow the conditional co-operation rules.

The third chapter uses evolutionary psychology to explain the emergence of a society of Rule-Following Punishers who have an independent preference for following rules and for detecting and punishing violators (104–112). Communities with a large number of people who have this preference have an evolutionary advantage because they are able to co-operate in a way that benefits everyone. A rule identifies certain general properties of actions and then says whether actions that instantiate those qualities are permissible, required or forbidden. For rules to be able to serve their beneficial function, they must be well-defined: the society has to be able to settle on a clear interpretation.

Following these rules is rational because the adoption of a rule can create new cares and concerns and therefore new reasons for us to act on which are independent of our other goals. These new rule-based reasons explain the strong deontic status of these social rules. We will then face situations in which we must be able to compare how strong these new reasons are compared to the other reasons we already have on the basis of what value. One of the most interesting parts of the book is where Gaus considers how utility functions that have both values and reasons as their inputs can solve these more complex decision-making problems.

So far, the story has mainly been descriptive: Gaus has explained how social rules can come to be internalised in a society. However, in order to solve the problem of authority, Gaus also has to show how these widely internalised rules can also be justified from the perspective of free and equal persons. So, the second task for Gaus is to show how the rules of social morality can have normative authority without undermining our freedom or equal moral status.

Chapter 4 introduces the basic resources for carrying out this task. Its first half emphasises the significance of moral emotions. Emotions are needed to explain why we care about whether others comply with the social rules. Our strong emotional reactions to rule-violations also suggest that we regard social norms as more important than our other goals. Gaus follows Strawson and Darwall in thinking that moral emotions which motivate us to detect and punish rule-violation are constitutive of our moral practices and relationships as they presuppose that other people's business is also our business.

If we do not blame others for violating a rule or if we fail to feel guilty when we do so ourselves, we have not adopted the rule as that would require recognising the rule's authority. Given that moral judgments demand authority, this leads Gaus to conclude that making moral judgments is inherently tied to the reactive attitudes. He argues that reactive attitudes are still not sufficient to explain what happens when we make moral evaluations: this requires also appreciating the reasons for why the rule is important and also knowing why others violate the rule. If someone is not able to appreciate the reasons for the rule, then we tend not to blame her for violating it.

This observation leads Gaus to accept the Principle of Moral Autonomy: it is appropriate to morally evaluate how someone behaves only if they are capable of caring for the rule you use in your evaluation when it doesn't promote their goals and they also have sufficient reasons to endorse the rule (222). This means that whether we can use the system of social rules to evaluate a person's behaviour will depend on what reasons they have. According to Gaus, we talk about the reasons a person has in order to make sense of her behaviour. This is why he thinks that what reasons you have is a function of what you would conclude to have undefeated reasons to do if you did a reasonable amount of good reasoning starting from your actual beliefs and attitudes (250).

The four chapters of the second part then solve the problem of authority and they also draw out the political consequences of this account of the authority of social morality. In the opening chapter, Gaus summarises the conclusions of the previous part with the principle of public justification: a necessary condition for a rule of social morality to be authoritative is that (i) we all have sufficient reasons to accept the rule and (ii) most of us actually conform to this rule already (263). This principle offers each one of us a veto to moral rules: if you do not have sufficient reasons to follow a rule, then it fails to pass the test.

Gaus then offers a deliberative model for considering which moral rules pass the previous test. In the first stage, we can all put forward general public rules, which could solve conflicts, override our personal goals, be acceptable from different standpoints and not threaten anyone's core interests. If we reflected on our values and reasons, each one of us could then rank these options. If a given rule is lower even in one person's ranking than no rule at all, it is ineligible. We can also throw out Pareto inferior options. At the end of this process, we then have a set of socially eligible rules, which will still contain many different alternatives. How could we then find a unique social morality that would have authority over us?

Chapter 6 offers two answers to this question. Firstly, because we all understand ourselves as agents, we will all rank highly moral rules that protect our agency. This is why the elements of social morality that give us a right not to be coerced, deceived or harmed, a freedom of conscience and a weak duty to assist others can be justified to everyone. Second, given the amount of reasonable disagreement, we all would accept proposals which divide the moral space into domains of individual freedom. If we can all make decisions within these domains, then conflicts can be avoided. This is why we all would arguably endorse a right to property and a right to privacy.

Even after this, the set of socially eligible rules will still contain many different alternatives. It will contain competing interpretations of the previous rights and also various eligible extensions of the social rules. Chapter 7 begins by arguing against two ways to reach a unique set of rules from this point. Gaus argues that the problem of indeterminacy cannot be solved by a uniquely justified collective decision procedure or a theory of rational or fair bargaining. Gaus claims instead that the way in which we can arrive at a unique publicly justified morality is through a contingent, path-dependent process of social evolution. Iterated

coordination games can be used to show that a large number of Rule-Following Punishers can converge on a unique solution and move the whole group to this solution as well. This process does not justify the resulting morality which most people accept, but if that morality belongs to the set of eligible moral rules which everyone has sufficient reasons to accept then it will have legitimate authority. As an expression of the real public reason, it is the unique set we can use as a standard for evaluating others. In this way, our positive social morality to determine in part what really is right and wrong.

In the final chapter, Gaus then argues from the previous picture of social morality to classical liberalism in political philosophy. He first claims that the justified social morality provides states with a degree of political authority. We all have sufficient reasons to accept rules that allow states to coerce people to obey its rules, and we also accept that the state can often nudge people into equilibrium on controversial moral issues. However, these are reasons why we owe it to each other that we follow the laws of our society: states do not have a right to rule as such – we do not owe it to them that we obey laws. Gaus also offers an instrumentalist justification for democratic states: these better protect our fundamental rights as agents (452).

However, it also follows from Gaus's theory that a state cannot justifiedly go beyond these parameters. Remember that each individual has a veto over the proposed rules on the basis of their considered conclusions about reasons. The minimal rights which states must protect pass this test. However, if someone suggests a rule that would enable a state to do more than protect those rights, anyone can veto this proposal if the new rule isn't better than no rule at all from the perspective of the reasons they have and can recognise. Given that some people are against government interference and because everyone will consider coercion as a cost, not many extensions to the role of states will pass the public justification test.

Gaus also argues against a number of redistributive schemes on the grounds that these schemes cannot be justified to everyone because they do not respect the more fundamental rights to property and because they can reasonably be seen as coercive. He furthermore claims that states are rarely needed to provide public goods because there are fewer of these goods than assumed (534) and because the market's failure to provide these goods can often be solved by other non-state institutions (533). Some people will also prefer to be without the public goods because they have reasonable views about, for instance, desert. This is why Gaus' public reason can only justify a small state.

The main problem with Gaus's overall theory is that he has not offered us a problem which needs a solution. According to Gaus, when I say that you are doing something wrong I am making a demand on you. He then claims that unless my demand is based on a social morality which (i) most people conform to and (ii) which everyone would conclude they have reasons to recognise I am simply forcing you to obey, which is objectionably authoritarian (11 and 230). This leads Gaus to investigate which widely accepted social rules satisfy the second condition.

However, this simply isn't a plausible view of what I do when I make a moral claim (Enoch 2013, sec. 5). When I tell you that what you are doing wrong, *I* am not claiming authority or

demanding you to do anything.¹ This claim just isn't about me and my power to push you around. Rather, what creates the moral demand on you (if anything) is the content of what I am saying – the wrongness of your action. Of course, if what you do is not wrong, then I fail to point to anything that demands actions from you. But if you are doing something wrong, then you are required to stop because what you do is wrong and also for the reasons your act is wrong. Because of this, when you make a moral claim, you are not demanding to be obeyed even if the content of your claim can demand actions from your audience. This is why making a moral claim is never coercive or objectionably authoritarian.

There is a simple reason why Gaus seems to miss this. He doesn't recognise that the content of the moral claims requires actions from us because he doesn't seem to think that moral claims have content. This is revealed by the way in which he writes about moral imperatives, prescriptions, rules and especially when he endorses R.M. Hare's view in metaethics (see for instance pages 8, 13, 26, 33 and 125–128, but see also page 14).

Hare's view was based on the idea that we can make utterances in different moods: indicative, imperative, interrogative and so on (Hare 1952 and Schroeder 2010, chs. 2–3). He then argued that using moral words is in many ways like making an utterance in the imperative mood. Both the indicative mood and moral words make the same contribution to the meaning of the sentence: they make the sentences suitable for issuing prescriptions. If you think that moral claims issue prescriptions like this, then you are right to worry that they might undermine freedom.

The problem is that theories which do not give moral sentences and utterances robust content fail to explain how the meaning of complicated moral claims is a function of the meaning of simple moral claims. If moral claims have truth-conditional content, we can use the truth-conditions of simple claims and truth-functional accounts of connectives to provide the truth-conditions of complex claims. However, if you think that the meaning of moral claims depends on their suitability for issuing prescriptions, you must be able to offer a recipe for how the meaning of complex moral claims can be understood in terms of the simple prescriptions which simple moral claims are suited to issue.

Even if simple prescriptions can be combined to complex ones ('Shut the door!' and 'Open the door!' combine to 'Shut the Door and Open the Door'), this doesn't solve the problem. For example, what prescription is the sentence 'Lying is wrong or my parents lied to me' suited to make? Because there is no good answer to this question, we can understand complicated moral sentences only if we think that moral sentences have truth-evaluable content. And, if moral sentences do have content, then when we make moral claims we are not asking other people to obey us but rather we are talking about the moral reality that

¹ It is true that according to Gauss I am despite this claiming authority over how the moral reality should be interpreted (11). However, there is no reason that this is any more serious than the epistemic authority I claim when I assert that snow is white. In both cases, I can be asked for reasons for my judgment.

requires actions from all of us. This is why our practice of making moral evaluations doesn't threaten our freedom Gaus recognises this worry (9–11) but fails to address it.

This problem becomes even more pressing when we consider Gaus's substantial view of having reasons which grounds his classical liberal political conclusions:

The Reasons One Has: Alf has (provisionally) a sufficient reason R if and only if a "respectable amount" of good reasoning by Alf would conclude that R is an undefeated reason (250).

This thesis makes what Alf has sufficient reasons to do dependent on his hypothetical beliefs about reasons. What is the content of these beliefs? A plausible suggestion is that the content of Alf's belief is given by the conditions in which it is true that he has a reason (or by how he represents those conditions – accurately or not). If the conditions in which Alf has a reason do not depend on what Alf believes, then The Reasons One Has itself is false. If, in contrast, the truth-conditions of Alf's belief depend on his own beliefs about what reasons he has, then The Reasons One Has becomes hopelessly circular.²

The only other alternative is to understand Alf's beliefs about reasons on the right-hand side of the previous bi-conditional as desire-like attitudes. The resulting view would say that Alf has a sufficient reason R if and only if after a respectable amount of good reasoning he would want to act because of R. This would make Alf's reasons a direct function of what he wants and thus Gaus's view would be a simple form of subjectivism about reasons, which most metaethicists reject for good reasons. Of course there are many metaethical expressivists who claim that utterances about reasons express our desire-like attitudes and as we saw above Gaus has a lot of sympathy for this view. However, even expressivists are not committed to the idea that Alf's reasons depend on what he wants. The expressivists can perfectly well express their own positive attitudes towards Alf's actions that do not depend on Alf's desires.

All of this matters. If The Reasons One Has fails, Gaus's motivation for thinking that reasons to accept moral principles must be accessible to each agent from her own deliberative perspective is undermined. If this is right, liberal members of the public who rank suggestions about more extensive states low wouldn't be able to veto merely on the basis of what reasons they recognise from their actual deliberative perspectives. This would enable us justify more extensive states to everyone on the basis of the reasons they have but cannot recognise.

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² In response, Gauss might say that The Reasons One Has is only about sufficient reasons. He could then argue that we have beliefs about pro tanto reasons and that it is these beliefs that determine what we have sufficient reasons according to the Reasons One Has. The problem with this is that this view assumes that there are pro tanto reasons. It is then natural to think that our pro tanto reasons determine what we have sufficient reasons to do rather than our beliefs about them.

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